

REDACTED DECISION – DK# 12-240 P
BY – GEORGE V. PIPER, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION on OCTOBER 10, 2012
DECISION ISSUED ON APRIL 4, 2013

SYNOPSIS

TAXATION -- PROCEDURE AND ADMINISTRATION -- It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. § 11-1-2 (West 2010).

PERSONAL INCOME TAX -- BURDEN OF PROOF -- In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax, interest, or penalty is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10-10(e) (West 2010); W. Va. Code R. §§ 121-1-63.1 and 69.2 (2003).

PERSONAL INCOME TAX -- ISSUANCE OF ASSESSMENT -- Failure of a taxpayer to comply with West Virginia Code Section 11-10-7(a) in that the taxpayer did not sufficiently return taxes either by not properly remitting or by failing to make a return or has made a return which is incomplete, deficient or otherwise erroneous, allows the Tax Commissioner to investigate and determine or estimate the tax liability and to make an assessment thereof. *See* W. Va. Code Ann. § 11-10-7(a) (West 2010).

PERSONAL INCOME TAX -- RESIDENT INDIVIDUAL -- To be a resident individual for personal income tax purposes pursuant to West Virginia Code Sections 11-21-7(a)(1) and 11-21-7(a)(2), one must be an individual who is either domiciled in this state, unless he maintained no permanent place of abode in this state; maintained a permanent place of abode elsewhere; and spent in the aggregate not more than thirty days of the taxable year in this state, or is not domiciled in this state but maintained a permanent place of abode in this state and spent in the aggregate more than one hundred eighty-three days of the taxable year in this state. *See* W. Va. Code Ann. §§ 11-21-7(a)(1) & 11-21-7(a)(2) (West 2010).

PERSONAL INCOME TAX -- PETITIONER IS A WEST VIRGINIA RESIDENT INDIVIDUAL -- The evidence showed that Petitioner, who did not sufficiently return taxes, was in fact a resident individual of the State of West Virginia for tax year 2007, in that he never showed that he maintained no permanent place of abode in this state, maintained a permanent place of abode elsewhere and spent in the aggregate not more than thirty days of the taxable year in this state. *See* W. Va. Code Ann. §§ 11-21-7(a)(1) (West 2010).

PERSONAL INCOME TAX -- WEST VIRGINIA ADJUSTED GROSS INCOME -- Petitioner's West Virginia adjusted gross income as a resident individual was properly based upon his reported federal adjusted gross income. *See* W. Va. Code Ann. § 11-21-12(a) (West 2010).

PERSONAL INCOME TAX -- BURDEN OF PROOF NOT MET -- The Petitioner did not carry his burden of proof in that he did not establish that the assessment of personal income tax, at issue in this case, was erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. §§ 121-1-63.1 & 69.2 (2003).

FINAL DECISION

On April 20, 2012, the Tax Unit of the Compliance Division (the Division) of the West Virginia State Tax Commissioner's Office (the Commissioner or the Respondent), issued an assessment for personal income tax against the Petitioner, Mr. A. The assessment was issued pursuant to the authorization of the State Tax Commissioner under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for tax year 2007, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax of \$____, for a total assessed tax liability of \$____. Written notice of the assessment was served on the Petitioner, as required by law.

Thereafter, on June 20, 2012, the Petitioner timely filed with this Tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code Ann. §§ 11-10A-8(1) and 11-10A-9 (West 2010).

Subsequently, a notice of hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of West Virginia Code Section 11-10A-10.

FINDINGS OF FACT

1. Petitioner resides in a West Virginia town in a West Virginia County.
2. Petitioner receives all of his mail at his West Virginia town, West Virginia address and has a published West Virginia telephone number.
3. Petitioner had West Virginia income tax withheld from his wages in tax year 2007.

4. On December 19, 2011, the Compliance Division sent a letter to the Petitioner informing him that he had not filed a personal income tax return for tax year 2007 and that within thirty days of receipt he must either: (1) file the return and remit any tax due including supporting documentation; (2) if a return was previously filed he should provide a signed and dated copy; or (3) if he was not required to file a return he was to provide an explanation. The letter further stated that failure to provide the requested information within thirty days would result in further action (State's Exhibit 2).

5. On January 20, 2012, the Compliance Division informed the Petitioner, by letter, that the reason he received the delinquent personal income tax return notice, was because there was no record of him filing a return for tax year 2007, or ever having filed any personal income tax return with the State of West Virginia. He was also informed that the Division had enclosed booklets to assist him in filing these returns, with return envelopes, but that if the returns were not received by the Respondent, estimated assessments would be prepared (State's Exhibit 3).

6. Petitioner returned State's Exhibit 3 to Respondent with the notation that the documents appear to be a "misdirected posting with presentments; that he did not understand the documents, and did not have knowledge or information to form a responsive answer."

7. On April 20, 2012, an estimated assessment in the amount of \$_____ was issued against Petitioner for tax year 2007, which was based upon tax information obtained from the Internal Revenue Service, which reflected that the Petitioner had reported federal adjusted gross income for that same year. Petitioner was given credit for West Virginia income taxes which had been withheld from his pay during tax year 2007 (State's Exhibit 1).

DISCUSSION

The first issue for determination is whether the Respondent had the authority to investigate and determine Petitioner's tax liability and to issue the assessment. Pursuant to West Virginia Code Section 11-10-7(a), if the Tax Commissioner believes that any tax administered under Article 10 has been insufficiently returned by a taxpayer either by not properly remitting or by failing to make a return or has made a return which is incomplete, deficient or erroneous he can proceed to investigate and determine or estimate the tax liability and make an assessment thereof. W. Va. Code Ann. § 11-10-7(a) (West 2010).

In this case, Respondent had received information from the Internal Revenue Service that Petitioner had filed a federal income tax return for tax year 2007. However, Respondent had no record of Petitioner having ever filed a West Virginia personal income tax return with the State of West Virginia for tax year 2007.

Accordingly, West Virginia Code Section 11-10-7(a) specifically authorizes the Tax Commissioner to investigate and determine Petitioner's tax liability in the light of Petitioner's failure to properly remit his West Virginia personal income taxes.

The second issue for determination is whether the Petitioner was a West Virginia resident individual for tax year 2007 and therefore subject to the payment of the assessed taxes.

To be a resident individual, West Virginia Code Section 11-21-7 states as follows:

- (a) Resident Individual. -- Resident individual means an individual:
 - (1) Who is domiciled in this state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in aggregate not more than thirty days of the taxable year in this state, or
 - (2) Who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred and eighty-three days of the taxable year in this state.

(b) Nonresident individual. -- A nonresident means an individual who is not a resident.

W. Va. Code Ann. § 11-21-7 (West 2010)

During the evidentiary hearing, Petitioner testified that although he lived in the State of West Virginia during 2007 and received all of his mail here, he did not reside here, and in fact, he did not reside anywhere. He further testified that to avoid paying income taxes to any state, one must merely state, “for the record” that he does not reside in the state seeking to impose such taxes. Petitioner also testified that he actually worked in Virginia but offered no explanation as to why working in Virginia would alter the fact that he was a resident individual of the State of West Virginia.

It is therefore clear from the evidence that the Petitioner, who did not sufficiently return taxes, was a resident individual of the State of West Virginia under West Virginia Code Section 11-21-7(a)(1), because he never showed that he is not domiciled in West Virginia or that he, maintained a permanent place of abode elsewhere, and spent in the aggregate not more than thirty days of the taxable year in this state. Petitioner never presented any evidence whatsoever rebutting the claim that Petitioner was a resident individual of the State of West Virginia for tax year 2007.

The final issue for determination is whether the Respondent used the correct yardstick in arriving at the proper amount of Petitioner’s West Virginia adjusted gross income.

West Virginia Code Section 11-21-12(a) provides that the West Virginia adjusted gross income of a resident individual is based upon a taxpayer’s federal adjusted gross income for the tax year.

In this case, Respondent had information from the Internal Revenue Service showing that Petitioner had reported federal adjusted gross income for tax year 2007; however, Petitioner had

never filed a West Virginia personal income tax return for that year, which reported that same amount of federal adjusted gross income.

Accordingly, Petitioner's West Virginia adjusted gross income, which was used to calculate the assessment against the Petitioner as a resident individual, was properly based upon his reported federal adjusted gross income.

Finally, it should be noted that at the evidentiary hearing in this matter the Petitioner presented numerous rambling arguments that this Tribunal commonly sees from tax protestors or tax deniers. For example, the Petitioner claimed that there are natural persons and artificial persons, and that artificial persons are created and given life by the government. This Tribunal heard all of the Petitioner's arguments in this regard, has considered them, and finds them to be inapplicable to the legal issues discussed above.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. It is duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. §11-1-2 (West 2010).
2. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax, interest or penalty is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10-10(e) (West 2010); W. Va. Code R. §§ 121-1-63.1 and 69.2 (2003).
3. Failure of a taxpayer to comply with West Virginia Code Section 11-10-7(a) in that the taxpayer did not sufficiently return taxes either by not properly remitting or by failing to

make a return or has made a return which is incomplete, deficient or otherwise erroneous, allows the Tax Commissioner to investigate and determine or estimate the tax liability and to make an assessment thereof. *See* W. Va. Code Ann. §11-10-7(a) (West 2010).

4. To be a resident individual for personal income tax purposes pursuant to West Virginia Code Section 11-21-7(a)(1) and 11-21-7(a)(2), one must be an individual who is either domiciled in this state, unless he maintained no permanent place of abode in this state; maintained a permanent place of abode elsewhere; and spent in the aggregate not more than thirty days of the taxable year in this state, or is not domiciled in this state but maintained a permanent place of abode in this state and spent in the aggregate more than one hundred eighty-three days of the taxable year in this State. *See* W. Va. Code Ann. §§ 11-21-7(a)(1) & 11-21-7(a)(2) (West 2010).

5. The evidence showed that Petitioner, who did not sufficiently return taxes, was in fact a resident individual of the State of West Virginia for tax year 2007, in that he never showed that he maintained no permanent place of abode in this state, maintained a permanent place of abode elsewhere and spent in the aggregate not more than thirty days of the taxable year in this state. *See* W. Va. Code Ann. §§ 11-21-7(a)(1) (West 2010).

6. Petitioner's West Virginia adjusted gross income as a resident individual was properly based upon his reported federal adjusted gross income. *See* W. Va. Code Ann. § 11-21-12(a) (West 2010).

7. The Petitioner did not carry his burden of proof in that he did not establish that the assessment of personal income tax, at issue in this case, was erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. §§ 121-1-63.1 & 69.2 (2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the personal income tax assessment issued against Mr. A, for tax year 2007, in the amount of \$____, interest in the amount of \$____, and additions to tax of \$____ for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED**.

Pursuant to West Virginia Code Section 11-10-17(a), interest continues to accrue on this unpaid tax until this liability is fully paid.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
George V. Piper
Administrative Law Judge

Date Entered